Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LORI ANN PARR,

Petitioner,

v.

MIDDLE TENNESSEE STATE UNIVERSITY; DONALD CURRY; J.MAIER, Dr.; MICHAEL A. GIBSON; JAMES WALKER, President; C. NATHAN ADAMS,
In their official and individual capacities.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Lori Ann Parr
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26 pp

QUESTIONS PRESENTED

1. Does Congress have the constitutional authority to require states to pay money damages for violations of Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (ADA) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under Title II of the ADA?

2. Does Congress have the constitutional authority to require states to pay money damages for violations of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) §504, et seq., as amended, (Rehabilitation Act) at State universities, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction under the Rehabilitation Act?

3. Does the severability clause of Title IV of the ADA (§ 12213) allow the remaining legal protections and legal remedies of the ADA for discrimination and retaliation of disabled students at State universities to remain enforceable if the accommodations provisions of the ADA are found to be unconstitutional, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing petitioner's claims for lack of subject matter jurisdiction under the ADA?

4. Did the Sixth Circuit err in concluding that all of the Petitioner's claims are violations of equal protection discrimination principles, and therefore did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction?

5. Did the Sixth Circuit err in affirming the judgment of the District Court dismissing the petitioner's claims for lack of subject matter jurisdiction, when the petitioner raised claims against the Respondents in their individual capacities under 42 U.S.C. §1983?

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Appendix:

A. Opinion of the United States Court of Appeals for the Sixth Circuit, filed May 13, 2003, No. 02-5925

B. Order of the United States District Court For the Middle District of Tennessee, Nashville Division, filed June 18, 2001, No. 3-98-0865

C. Pertinent Text of Constitutional and Statutory Citations

Notice: Pursuant to Supreme Court Rule 29 (4)(b), notice is given that 28 U.S.C. § 2403(a) may apply to this filing.

PETITION FOR WRIT OF CERTIORARI

Lori Ann Parr respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Middle District at Nashville, Tennessee, *Lori Ann Parr v. M.T.S.U., et al.*, No.: 3:98-0865, (Middle District, June 18, 2001) is unpublished. The opinion of the United States Court of Appeals for the Sixth Circuit, *Lori Ann Parr v. M.T.S.U., et al,* Record No. 02-5925 (Sixth Circuit, May 13, 2003) is unpublished (App. A).

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 13, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Americans With Disabilities Act of 1990, Title II & Title IV, 42 U.S.C. 12101, Title II, Part A, §'s 12131 to 12134, Title IV, §'s 12201 to 12213 (ADA)

Rehabilitation Act of 1973, § 504, as amended through 1998; 42 U.S.C. 2000d-7 (Rehabilitation Act)

42 U.S.C., § 1983

TABLE OF AUTHORITIES CITED

Board of Trustees of the University of Alabama, et. al. v. Garrett, et al. 531 U.S.356, 121 S.Ct. 955 (2001).....6,8
Board of Regents v. Roth, 408 U.S. 573, 92 S.Ct. 2707 (1972).....9
Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982).....10
Kendall v. Board of ED. Of Memphis City, 627 F.2d 1 (1980).....9
Plyler v. Doe, 457 U.S. 221; 235; 233 (1981).....6,7,8
Popovich v. Cuyahoga County Court of Commons Pleas, 227 F.3d 627, 639-640 (6th Cir. 2000).....3
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Russello v. United States, 464 U.S. 16, 23 (1983).....8
*Stemler v. City of Florence*126 F.3d 866 (1997).....9

STATEMENT OF THE CASE

On September 18, 1998, Petitioner filed her original Complaint in this action in the United States District Court for the Middle District of Tennessee, *pro se*.[1] On October 19, 1998, the State of Tennessee moved to dismiss the case in

[1] Petitioner petitioned the District Court for appointment of counsel, but the motion was denied. Plaintiff had hesitated, on and off, filing any action against MTSU, et al. in federal court fearing further retaliation and/or physical assaults from MTSU, et al. Upon the last statute about to expire in the matter, Petitioner – who was familiar with court procedure/process from her Criminal Justice Administration program– filed the initial Complaint, pro se, to seek relief, and to seek protection with the District Court, fully intending to acquire counsel immediately thereafter; however, approximately one month after Petitioner filed her Complaint, MTSU, et al. moved to dismiss the case upon the issue of sovereign immunity. Because of the complexity of the Eleventh Amendment issues, the case now being an appellate matter, and the division and uncertainty of

its entirety concerning Middle Tennessee State University (MTSU), asserting that Congress was not acting under a valid exercise of power in abrogating the States' Eleventh Amendment sovereign immunity under the ADA. MTSU is a state university that receives federal funding. The District Court denied MTSU's Motion to Dismiss for lack of subject matter jurisdiction by Order on November 20, 1998. On Dec.4, 1998, Respondent MTSU filed an interlocutory appeal docketed in the Sixth Circuit as Case No. 98-6701, and on Sept. 16, 1999, Respondents Curry, Maier, Gibson, and Walker filed an interlocutory appeal docketed in the Sixth Circuit as Case No. 99-6296. Petitioner was given leave by the District Court to Amend her Complaint to include, among other issues, to identify more specifically a cause of action under the Rehabilitation Act, and to join a separate cause of action filed in the U.S. District Court, 3:00-398 against Respondents MTSU and Dr. C. Nathan Adams (Adams) concerning discriminatory and retaliatory acts and due process violations Petitioner alleged were committed against her by MTSU, et al. while her original case (3:98-0865) was pending in District Court. Petitioner's Amended Complaint **(hereinafter "Complaint")** petitioned the Court for "declaratory relief, injunction, and damages to redress the deprivation of rights reserved to Petitioner under the Americans With Disabilities Act; U.S.C. 42, Chapter 126, Section 12101 to 12213; U.S.C. 42, Chapter 21, Section 1981 to 2000h-6; and under the Rehabilitation Act of 1973, and its Section 504, and any and all other applicable federal and/or

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application of U.S. Circuit Court and U.S. Supreme Court rulings concerning matters of disability making such cases somewhat undesirable, prospective attorneys the plaintiff approached required of the plaintiff approx. $5,000 as retainer (part to cover costs of discovery) in contingent arrangements, of which Petitioner could not afford. Consequently, Petitioner has had to continue on in pro se capacity during these last several years as these matters concerning the ADA have been pending and deliberated before the Sixth Circuit Court, its sister circuit courts, and the U.S. Supreme Court, Petitioner's pro se status being the only option remaining to her to allow her case to survive the disability law deliberations in the appellate courts.

constitutional law," among other requests. On June 15, 2001, the District Court issued a *sua sponte* ruling dismissing Petitioner's action on the basis of the ruling of the en banc hearing in the *Popovich v. Cuyahoga County Court of Commons Pleas*, 227 F.3d 627, 639-640 (6th Cir. 2000). On June 25, 2001, Petitioner filed a Motion To Amend and/or Alter, and a subsequent Motion To Amend Petitioner's Motion To Amend and/or Alter on July 24, 2001. On June 17, 2002, Orders were entered denying Petitioner's Motions based upon the rehearing of the *Popovich* en banc hearing. On July 12, 2002, Petitioner filed a Notice of Appeal with the Sixth Circuit Court of Appeals. On May 13, 2003, the Sixth Circuit affirmed the judgment of the District Court.

STATEMENT OF THE FACTS

Petitioner entered the graduate program for the Accounting and Computer Information Systems (ACIS) master's degree at MTSU in fall of 1993.[2] Petitioner was a documented disabled student and was offered accommodations by MTSU for two disabilities, 1) carpal/cubital tunnel syndrome, and 2) conversion disorder. In 1994, in violation of MTSU policy, Dr. Clark (Clark) denied Petitioner an accommodation that had been granted Petitioner by MTSU. Petitioner filed a complaint with MTSU's disability office with copy to Respondent President Walker (Walker). After filing the complaint, Petitioner began to experience repeated discriminatory and retaliatory acts and omissions of acts from Respondents that continued on for years, that included, but were not limited to, acts and omissions of acts that violated Petitioner's due process rights and equal protection rights. The eventual outcome of the

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[2] Petitioner began a Master's of Criminal Justice graduate program in 1997 after it became clear the respondents were going to block petitioner's completion of her master's degree in ACIS. Petitioner graduated with her Master's of Criminal Justice (M.C.J.) degree on May 10, 2003.

Respondents' acts and omissions of acts caused Petitioner to lose her master's degree in ACIS from the expiration of the matriculation period to complete the master's degree; caused Petitioner to lose the future monetary and other future benefits Petitioner would have received from the master's degree[3]; wasted thousands of hours[4] Petitioner had invested in her time attending pre-requisite/requisite classes, and studying, for the ACIS masters; caused Petitioner to lose all of the expected return on her investment in the ACIS master's degree from the substantial, non-dischargeable student loans[5] Petitioner borrowed for educational expenses and to support herself and her two teenage sons while making this significant investment in a high-paying career after a work-injury forced Petitioner to change careers; caused Petitioner to be held financially liable for such non-dischargeable student loans plus compounding interest, for the remainder of her life[6], and harmed Petitioner's professional reputation, among other damages noted in Petitioner's Complaint. Additionally, Petitioner had to begin

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[3] Upon completion of re-taking QM 677 in Spring of 1999 while Petitioner's instant case was pending in the U.S. District Court, Petitioner intended to show at trial she had completed all requirements for the ACIS master's degree.

[4] Petitioner spent on average 25-40 hours per week for approximately 3 years working on the pre-requisite and requisite classes for the master's degree in ACIS, year-round [Approx.: Fall – Aug. 27 to Dec. 17; Spring – Jan. 12 to May 10; Summer – June 3 to Aug. 5. In-school for on average 40 weeks per year, Petitioner expended conservatively 1000 hours per year on the pre-requisites/requisites for the degree, or, conservatively, 3000 total hours for three years.

[5] Petitioner stated in her letter to Curry that the approximate amount borrowed was approx. $35,000; Petitioner has determined that the actual amount is higher, but since the actual amount was not entered into evidence in the Record, Petitioner will proceed in argument as if the amount were $35,000, at interest rates ranging 7 ½ to 8 ½ percent per year.

[6] The government's student loan program offers an income contingent plan as an alternative to bankruptcy/non-dischargeability that allows forgiveness of the loans after 25 years; however, the income contingent plan can have serious consequences for student loan debtors, including contributing to the breakup of marriage and family, increasing the number of single parent families, and causing the seizure of assets of the elderly for tax payment of debt forgiven, as described in petioner's Brief to the Sixth Circuit, 02-5925.

work on a replacement master's degree, causing Petitioner and her sons to further suffer financially for many years. Further, Petitioner's medical condition (conversion disorder) was severely aggravated by the stress of these events.

JURISDICTIONAL STATEMENT

The basis for federal jurisdiction for the U. S. District Court, Middle District, Tennessee was invoked pursuant to U.S.C. 28 at 1331. The basis for federal jurisdiction in the U.S. Sixth Circuit Court of Appeals was invoked pursuant to Federal Rules of Civil Procedure Rule 4(a)(1).

REASONS FOR GRANTING WRIT

The ADA, 42 U.S.C. 12101 et seq., established a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities" because Congress found that "historically, society has tended to isolate and segregate individuals with disabilities," wherein "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. 12101(b)(1); 12101(a)(2). Congress found that discrimination against persons with disabilities "persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." 42 U.S.C. 12101(a)(3); 42 U.S.C. 12101(a)(7). In response to its determinations, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment" as authority for its passage of the ADA. 42 U.S.C. 12101(b)(4), including Title II, 42 U.S.C. §'s 12131-12165, to address discrimination by governmental entities in the operation of public services, programs, and

activities, including transportation; and Title IV, 42 U.S.C. §'s 12201 to 12213, with § 12213's severability clause indicating Congress' desire to allow remaining provisions of the ADA to remain intact should any provisions of the ADA be found to be unconstitutional. The term "disability" as defined by Congress is "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual" which includes "a record of such an impairment" and/or "being regarded as having such an impairment." 42 U.S.C. 12102(2).

Question 1 & Question 2:[7]

In *Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.* (2001) the Court noted Title II of the ADA "has somewhat different remedial provisions from Title I," and in reference to Justice Breyer's Appendix C "The overwhelming majority of these accounts pertain to alleged discrimination by the States in the provision of public services and public accommodations, which areas are addressed in Titles II and III of the ADA" (*Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.* 531 U.S.356, 121 S.Ct. 955, 2001, footnotes 1 & 7, *slip opinion*). In *Garrett*, the Court declined to decide the constitutional issue of whether Title II is appropriate legislation under §5 of the Fourteenth Amendment.

In *Plyler v. Doe* (1981) the Court noted "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance" and "...when the State provides an education to some and denies it to others, it immediately and inevitably creates class distinctions of a type fundamentally inconsistent with those purposes...of the Equal Protection Clause," and although the Court noted "...it is undeniable that education is not a "fundamental right" in the sense that it is constitutionally

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[7] Since petitioner's Question 1 & Question 2 involve similar issues – considering the ADA incorporates substantial portions of the Rehabilitation Act - the petitioner addresses both questions with the same presentation in petitioner's writ of certiorari.

guaranteed" the Court also noted "..*Rodriguez* implicitly acknowledged that certain interests, though not constitutionally guaranteed, must be accorded a special place in equal protection analysis" (Blackmun, concurring) (*Plyler v. Doe,* 457 U.S. 221; 235; 233).

Accommodations

In the enactment of prior legislation by Congress to bestow equal rights upon those suspect or quasi-suspect groups deemed oppressed in America – such as for race, religion, nationality, or gender – *de facto* accommodations were created as a by-product of such legislations. Nationwide busing was instituted at great social costs and social upheaval to the States in the Nation in order to accommodate equal access of the African-American race to better schools for better education. Racial quotas and mandates exist to accommodate equal access of minorities to higher education. Bilingual and multi-lingual court reporters, interpreters, and other multi-lingual specialists are employed in public services across the Nation to accommodate those who cannot speak or understand the English language.

Just as "*de facto* segregation is as real as segregation imposed by law,"[8] *de facto* accommodations are as real as accommodations imposed by law. If creation of accommodations – either *de facto* or by law – is beyond the reach of Congress' § 5 power, then Congress' powers to remedy purposed inequality under the Fourteenth Amendment - whether for race, national origin, gender, disability, or other - are rendered meaningless in their ability to remedy inequality.

Question 3:

Congress explicitly stated in Title IV (§ 12213) of the ADA "Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of this chapter and such action

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[8] Source: WorldNet®1.6, © 1997, Princeton University, http://www.dictionary.references.com/search?q=de+facto. Accessed: 08-03-03.

shall not affect the enforceability of the remaining provisions of this chapter." As stated by the Court in *Board of Trustees of the University of Alabama, et. al. v. Garrett, et al.*, [W]here Congress includes particular language in one section of a statute...it is generally presumed that Congress acts intentionally and purposely in the ..inclusion" citing *Russello v. United States*, 464 U.S. 16, 23 (1983). Therefore, if the accommodations provisions of the ADA are found to be unconstitutional by the Court, all remaining provisions of the ADA concerning discrimination and retaliation against disabled students in State universities, and private remedies for such, should remain enforceable, according to §12213.

Question 4:

The Sixth Circuit stated in its Order dismissing Petitioner's claims for lack of subject matter jurisdiction "State sovereign immunity bars Title II claims against state entities to the extent such claims are based on equal protection discrimination principles. *Popovich,* 276 F.3d at 816-18. All of Parr's claims are based on such equal protection principles." (6th Cir. Order, 02-5925, p. 3). The Petitioner asserted her claims also involved violations of due process. As noted by the Court in *Plyler v. Doe* "There is simply no support for appellant's suggestion that "due process" is somehow of greater stature than "equal protection".. [T]o the contrary, each aspect of the Fourteenth Amendment reflects an elementary limitation on state power." *Plyler v. Doe*, 457 U.S. 213. In *Popovich*, the Sixth Circuit ruled "We conclude that the plaintiff's action is barred by the Eleventh Amendment is so far as the action relies on congressional enforcement of the Equal Protection Clause, but it is not barred in so far as it relies on congressional enforcement of the Due Process Clause *Popovich v. Cuyahoga County Court, et al*, 276 F.3d 808,816-18(6th Cir.). This ruling by the Sixth Circuit appears to be in conflict with the Court's ruling in *Plyler.* The Petitioner had a due process liberty interest in the

preservation of her "good name, reputation, honor or integrity" as cited by the Sixth Circuit in *Kendall v. Board of ED. Of Memphis City*, 627 F.2d 1 (1980) citing this Court's ruling in *Board of Regents v. Roth*, 408 U.S. 573, 92 S.Ct. 2707. As stated in Petitioner's Statement of Facts, Respondents harmed Petitioner's professional reputation. By the creation of false information in the Petitioner's academic records, as described in Petitioner's Complaint, the harm from such false information to Petitioner's good name, reputation, honor and integrity has followed, and will follow the Petitioner to other universities as well as potential employers, for the remainder of her life. As also stated in *Kendall* "due process requires that the same administrators who investigated the matter not determine her guilt or innocence" *id, p. 5*, so the due process requirement of a fair and impartial hearing is guaranteed. As stated in Petitioner's Complaint, the submission of false information to the Appeals Committee by Respondent Curry - the Dean of the Graduate School – and Respondent Curry's indirect recommendation that the Petitioner's appeal had no merit, deprived the Petitioner of a fair and impartial hearing by allowing an administrator who investigated the matter to determine the outcome of the hearing by the submission of false information to the Appeals Committee. Finally, the due process clause clearly protects Petitioner's property interests she held in the substantial money and work Petitioner invested in the ACIS master's degree.

Question 5:

Petitioner asserts she has claims within Petitioner's Complaint against the Respondents in their individual capacities under 42 U.S.C § 1983. In *Stemler v.City of Florence,*126 F.3d 866 (1997) the Sixth Circuit stated "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or

constitutional rights of which a reasonable person would have known" citing this Court's ruling in *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738. Respondents' submissions of false information to affect the outcome of the Petitioner's appeals hearings, their withholding of evidence from the Petitioner she was entitled to submit to appeal hearings, in order for Respondents to affect the outcome of such appeals hearings, and Respondent Curry's direct admission in writing that he knew he was not to influence Petitioner's hearing before the Appeals Committee in any way, and his subsequent influence of the Appeals Committee, as described in the Petitioner's Complaint, clearly showed the Respondents are not shielded from liability in their individual capacities since they would have easily known that such acts and omissions of acts, were violations of Petitioner's due process rights, and equal protection rights.

For these reasons, the Petitioner respectfully requests this writ of certiorari be granted.

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APPENDIX A-Opinion of the Sixth Circuit, May 13, 2003

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION.

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

No. 02-5925

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORI ANN PARR,	)	FILED
Plaintiff-Appellant,	)	MAY 13 2003
	)	LEONARD
	)	GREEN, Clerk
	)	
v.	)	ORDER
MIDDLE TENNESSEE STATE	)	
UNIVERSITY; DONALD CURRY; J	)	
.MAIER, Dr.; MICHAEL A. GIBSON;	)	
JAMES WALKER, President,	)	
Defendant-Appellees.	)	

Before: GUY, BOGGS, and DAUGHTREY, Circuit Judges.

Lori Ann Parr, a Tennessee resident proceeding pro se, appeals a district court order dismissing her complaint filed under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C.§1213(1)(A), and the Rehabilitation Act of 1973, 29 U.S.C. § 504. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed.Fed. R. App. P. 34(a). Parr filed two separate actions against the defendants: Middle

Tennessee State University ("MTSU") and several of its individual officers who are sued in their individual and official capacities. Parr's claims in both actions arise out of the defendants' alleged failures to make reasonable accommodations for her to complete a master's degree program, including the taking of the comprehensive examination requirement. Parr also alleges retaliation for her requests for accommodations under the ADA. In *Parr v. Middle Tenn. State Univ., et al.*, No 3-98-0865 (*Parr I*), Parr sues MTSU as well as Donald Curry, J. Maier, Dr. Michael A. Gibson, and James Walker, who are MTSU faculty and administrators. In *Parr v. Middle Tenn. State Univ., et al,* No. 3-00-0398 (*Parr II*), Parr sues MTSU as well as Dr. C. Nathan Adams, a university employee. In the latter action, the Honorable Robert L. Echols adopted a report and recommendation to consolidate and transfer the latter action with the former action. In *Parr I*, the Honorable Todd J. Campbell, District Judge, denied the defendants' motion to dismiss, but allowed an interlocutory appeal by defendant MTSU on its Eleventh Amendment immunity defense. Judge Campbell, however, allowed the action to proceed against the individual defendants. In subsequent proceedings, the district court granted the individual defendants' motion to dismiss Parr's claims against them in their individual capacities. In *Parr II,* the defendants moved to dismiss MTSU and Parr's claims against defendant Adams, in his official capacity. While the motion to dismiss was pending, the *Parr I* defendants filed a motion to stay all proceedings in both cases pending the outcome of the interlocutory appeals. The district court granted the defendants' motion to stay these proceedings, and denied MTSU's motion to dismiss. The interlocutory appeals were assigned Case Nos. 98-6701 and 99-6296. The first appeal (98-6701) involves MTSU and the second appeal (99-6296) involves the individual defendants in *Parr I.* In 99-6296, the panel reversed the district court's denial of the individual defendants' motion to dismiss based on sovereign immunity. This court remanded the case to the

district court with instructions to dismiss the claims against the individual defendants in their official capacities. In 98-6701, the panel reversed the district court's denial of MTSU's motion to dismiss and remanded the case to the district court for further proceedings in light of the en banc decision in *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808, 816-18 (6th Cir.), *cert. denied,* 123 S.Ct. 72 (2002). Prior to the resolution of the interlocutory appeals in Case Nos. 98-6701 and 99-6296, the district court dismissed Parr's complaint for lack of subject matter jurisdiction, citing this court's initial decision in *Popovich v. Cuyahoga County Court of Commons Pleas*, 227 F.3d 627, 639-640 (6th Cir. 2000) (holding that states are immune from liability under Title II of the ADA), *rev'd en banc*, 276 F.3d 808 (2002). Parr's subsequent motion to alter or amend the judgment was denied. This appeal followed. The applicability of the Eleventh Amendment to claims against the states under the ADA is a question of law which this court reviews *de novo.* See *Timmer v. Mich. Dep't of Commerce,* 104 F. 3d 833, 836 (6th Cir. 1997). Upon review, we conclude that the district court properly dismissed Parr's complaint for lack of subject matter jurisdiction. State sovereign immunity bars Title II claims against state entities to the extent such claims are based on equal protection discrimination principles. *Popovich*, 276 F. 3d at 816-18. All of Parr's claims are based on such equal protection principles. Accordingly, the district court's order is affirmed. Rule 34 (j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

\s Leonard Green
Clerk

APPENDIX B – ORDER OF THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LORI ANN PARR, Plaintiff,	)	
v.	)	NO. 3-98-0865 JUDGE HAYNES
MIDDLE TENNESSEE STATE UNIVERSITY, ET AL.,	)	
Defendants.	)	

ORDER

Plaintiff Lori Ann Parr filed two separate actions against the defendants: Middle Tennessee State University ("MTSU") and several of its individual officers who are sued in their individual and official capacities. In both actions, Plaintiff asserts claims under Title II of the American with Disabilities Act ("ADA"), 42 U.S.C.§ 1213 (1)(A) and the Rehabilitation Act of 1973, 29 U.S.C. § 504. Plaintiff's claims in both actions arise out of the defendants alleged failures to make reasonable accommodations for her to complete a master degree program, including on the taking of the comprehensive examination requirement. Plaintiff also

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 6/18/01 By mgc

alleges retaliation for her requests for accommodations under the ADA. In Parr v. Middle Tennessee State University et al., 3-98-0865, Parr I, Plaintiff sues MTSU as well as Donald Curry, J. Maier, Dr. Michael A. Gibson, and James Walker, who are MTSU faculty and administrators. In Parr v. Middle Tennessee State University et al., 3-00-0398, Parr II, Plaintiff sues MTSU as well as Dr. C. Nathan Adams, a university employee. In the latter action, the Honorable Robert L. Echols adopted a Report and Recommendation to consolidate and transfer the latter action with the former action. In Parr I, the Honorable Todd J. Campbell, District Judge denied the defendants' motion to dismiss, but allowed an interlocutory appeal by defendant MTSU on its Eleventh Amendment immunity defense.(Docket Entry No. 20). Judge Campbell, however, allowed the action to proceed against the individual defendants. In subsequent proceedings, the Court granted the individual defendants' motion to dismiss Plaintiff's claims against them in their individual capacities.(Docket Entry Nos. 92 and 105). In Parr II, those defendants moved to dismiss MTSU and Plaintiff's claims against the defendant Davis, in his official capacity.(Docket Entry No. 99). The Court granted the defendants' motion to stay these proceedings, pending the outcome of the interlocutory appeals. These are two such appeals now before the Sixth Circuit Court of Appeals in Case Nos. 98-6701 and 99-6296. The first appeal involves MTSU and the second appeal involves the individual defendants in Parr I. Although this Court also granted a stay of further proceedings, a court may consider its lack of subject matter jurisdiction sua sponte at any stage of proceeding. Edelman v. Jordan, 415 U.S. 651,678 (1974). In light of the Sixth Circuit's holding in Popovich v. Cuyahogg County Court of Common Pleas, 27 F. 3d. 627, 639-640 (6th Cir. 2000), that Congress exceeded its authority in applying Title II to the States, this Court concludes that it lacks subject matter jurisdiction over the Plaintiff's Title II claims under the ADA against MTSU and the individual defendants in their official capacities. When the individual defendants are

sued in their official capacities, the State is the real party. Will v. Michigan Dep't of State Police, 491 U.S. 58, 63-64 (1989). Plaintiff cannot pursue individual liability against these defendants. See Docket Entry No. 105. In its ruling, the Sixth Circuit in Popovich noted that Title II of the ADA is an extension of the Rehabilitation Act of 1973 that would be covered by its Eleventh Amendment ruling. 227 F.2d at 640. Moreover, there, as here, the Plaintiff asserted a retaliation claim for her exercise of her ADA rights, but the Popovich holding was that the retaliation was likewise foreclosed. Id. at 641. To be sure, Plaintiff's complaints also refer to claims under "any and all other applicable federal and constitutional laws." See e.g. Docket Entry No. 1, Complaint at p.2 and Docket Entry No. 108, Amended Complaint at p.2. Yet, for a cognizable claim, Plaintiff must identify the specific rights at issue. Codd v. Brown, 949 F.2d 879,882 (6th Cir.1991). Accordingly, the action is **DISMISSED** for lack of subject matter jurisdiction. It is so **ORDERED**. This is the Final Order in this action. **ENTERED** on this the 15th day of June, 2001.

\s William J. Haynes, Jr.
WILLIAM J. HAYNES, JR.
United States District Judge

APPENDIX C -Pertinent Text of Constitutional and Statutory Citations

CONSTITUTION OF THE UNITED STATES

FOURTEENTH AMENDMENT, SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

THE AMERICANS WITH DISABILITIES ACT OF 1990 §12101.Findings and purpose (a)Findings The Congress finds that (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are

beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

(b)Purpose. It is the purpose of this chapter-

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Title II, Part A, of The Americans With Disabilities Act §12131.Definitions. As used in this subchapter:

(1) Public entity. The term "public entity" means- (A) any State or local government;(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; (2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. **§ 12132. Discrimination**. Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation

in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. **§ 12133. Enforcement.** The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title. **§ 12134. Regulations.** (a) In general. Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title (b)Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 794 of title 29. (c) Standards. Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

Title IV of The Americans With Disabilities Act §12201.Construction. (a)In general. Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title. (b) Relationship to other laws. Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter (d) Accommodations and services. Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept. **§12202.State immunity.** A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State. § **12203. Prohibition against retaliation and coercion** (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (b) Interference, coercion, or intimidation It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted

or protected by this chapter. (c) Remedies and procedures The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively. **§12213.Severability**. Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of this chapter and such action shall not affect the enforceability of the remaining provisions of this chapter.

28 U.S.C. § 1254 (1) Sec. 1254. - Courts of appeals; certiorari; certified questions. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

42 U.S.C. § 1983. - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Rehabilitation Act of 1973, § 504, as Amended through 1998; 29 U.S.C. 794 (a) **Nondiscrimination Under Federal Grants and Programs**
§504(a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by

reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulations may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees. **(b)** For the purposes of this section, the term "program or activity" means all of the operations of -**(1)(A)** a department, agency, special purpose district, or other instrumentality of a State or of a local government; or **(B)** the entity of such a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;**(2)(A)** a college, university, or other postsecondary institution, or a public system of higher education;**42 U.S.C. 2000d-7** a "State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973."